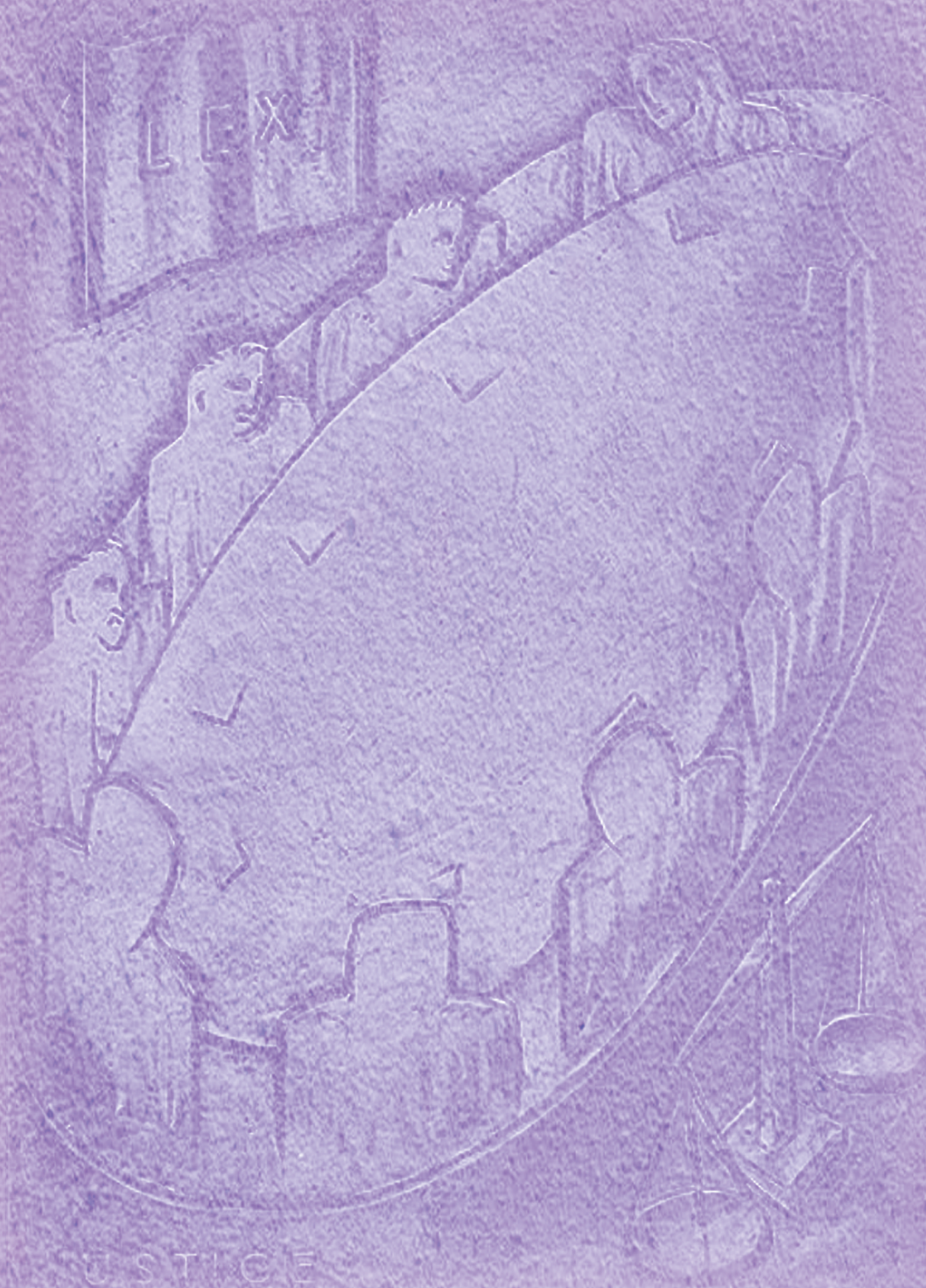


Personnel Appeals Board
2002

Annual Report





P e r s o n n e l

A p p e a l s

B o a r d

March 31, 2003

The Honorable David M. Walker
Comptroller General
United States General Accounting Office
Room 7000
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Walker:

Attached please find a copy of the Annual Report of the Personnel Appeals Board of the U.S. General Accounting Office for fiscal year 2002. The report describes the activities of the Board, its Office of General Counsel, and its Office of Equal Employment Opportunity Oversight during the past fiscal year.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey S. Gulin". The signature is fluid and cursive.

Jeffrey S. Gulin
Chair

attachment

U.S. General Accounting Office • Suite 560 • Union Center Plaza II • Washington, D.C. 20548 • Phone (202) 512-6137

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Biographies of Board Members

Jeffrey S. Gulin



Jeffrey S. Gulin, appointed to the Board in 1998, served as its Vice-Chair in fiscal year 2001, and was elected Chair in fiscal year 2002. A graduate of New York University and the University of Baltimore School of Law, Mr. Gulin has been engaged in administrative adjudication and private arbitration for the past 19 years. From 1989 until early 1997, he served as an administrative law judge for the State of Maryland adjudicating contested cases involving numerous fields of law including employment, disability, and environment. Mr. Gulin continues to serve as a private arbitrator with an emphasis on copyright, telecommunications, and technology. In that capacity, he has authored decisions setting copyright royalty rates for retransmission of television broadcasts by American satellite carriers; rates for the use of music contained in programming broadcast by public television and radio stations; and issuance of a permit to the U.S. Department of Energy to dispose radioactive waste at an underground repository in New Mexico. Recently, Mr. Gulin adjudicated a rate-setting case on behalf of the U.S. Copyright Office to establish royalty fees for internet transmissions of sound recordings.

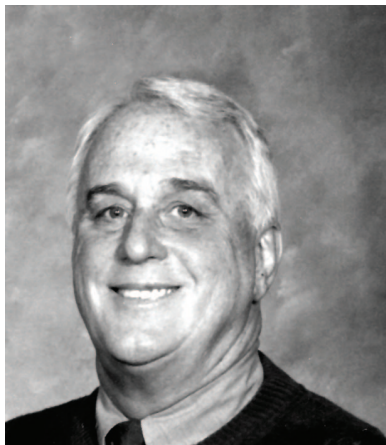
Anne Wagner



Anne Wagner, appointed to the Board in 1999, was elected Vice-Chair in fiscal year 2002. A graduate of the University of Notre Dame and the George Washington University Law School, Ms. Wagner began her career as a staff attorney in the Office of the General Counsel for the General Services Administration, where she primarily handled labor and employment issues. From there, she went on to become a litigating attorney for the American Federation of Government Employees (AFGE), AFL-CIO, the largest federal sector labor union representing more than 600,000 bargaining unit employees throughout the federal government. As AFGE's Assistant General Counsel for Litigation, Ms. Wagner has handled a wide array of cases arising under the comprehensive web of federal personnel and labor laws, and has argued numerous cases before federal district and appellate courts. She has also spearheaded litigation targeted at protecting the constitutional rights of federal employees, including challenges to the honoraria ban and mandatory drug testing.

Biographies of Board Members

Michael Doheny



Michael Doheny, appointed to the Board in 2002, is a graduate of St. Francis DeSales College in Milwaukee, Wisconsin and the Catholic University School of Law. Mr. Doheny retired after 32 years with the Federal government in October 2001. He started his federal employment with the former Civil Service Commission as a hearing officer adjudicating EEO complaints and adverse action appeals. Mr. Doheny was an administrative judge, appellate counsel and a manager with the U.S. Merit Systems Protection Board. He also served as Deputy General Counsel and Regional Director of the Washington, DC Regional Office at the Federal Labor Relations Authority. Mr. Doheny is an arbitrator on the panel of the Federal Mediation and Conciliation Service and is certified as a mediator by the State of Virginia.

Michael Wolf



Michael Wolf was appointed to the Board in 1997 and continued serving as Chair through the first quarter of the fiscal year. His term expired in FY 2002 but was extended through the end of the fiscal year. He is a graduate of Cornell University and the New York University School of Law. After a judicial clerkship on the U.S. District Court for the District of Columbia, Mr. Wolf practiced labor relations and employment law in private practice for more than 15 years; he also served as a prosecutor in the U.S. Department of Justice. Mr. Wolf is currently an arbitrator for the American Arbitration Association, the National Association of Securities Dealers, the Federal Mediation and Conciliation Service, and the International Commission on Holocaust Era Insurance Claims. He also serves on numerous permanent labor arbitration panels in the Public and private sectors. He is the co-author of the book *Religion in the Workplace: A Comprehensive Guide to Legal Rights and Responsibilities*.

PERSONNEL APPEALS BOARD

| | |
|------------------|------------|
| Jeffrey S. Gulin | Chair |
| Anne Wagner | Vice-Chair |
| Michael Doheny | Member |
| Michael Wolf | Member |

PERSONNEL APPEALS BOARD STAFF

| | |
|--------------------|---|
| Beth L. Don | Executive Director |
| M. Gail Gerebenics | Director, EEO Oversight |
| Susan P. Inzeo | Solicitor to the Board |
| Sue Sung Farley | Staff Attorney |
| Sarah L. Hollis* | Administrative Operation Assistant & Acting Clerk of the Board |

PERSONNEL APPEALS BOARD/OFFICE OF GENERAL COUNSEL STAFF

| | |
|-------------------|---------------------------------------|
| Janice M. Reece | General Counsel |
| Diane R. Williams | Senior Trial Attorney |
| M. J. Alexander | Senior Trial Attorney |
| Darian C. Jackson | Secretary/Legal Information Assistant |

*** No longer with the Board**

Congress passed the General Accounting Office Personnel Act (GAOPA) in 1980,¹ creating the Personnel Appeals Board (PAB or the Board). The Board is charged with adjudicating disputes, issuing decisions and ordering corrective or disciplinary action, when appropriate, in cases involving prohibited personnel practices, prohibited political activity, and discrimination involving employees of the U.S. General Accounting Office (GAO), a legislative branch agency. The same Act gives the Board authority to oversee GAO's employment regulations, procedures and practices relating to anti-discrimination laws.²

The PAB's authority combines the adjudicatory functions of its executive branch counterparts: the Merit Systems Protection Board (MSPB); the Federal Labor Relations Authority (FLRA); and the Equal Employment Opportunity Commission (EEOC).³ The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of its executive branch equivalents: the Office of Special Counsel and the EEOC Office of General Counsel.

By statute, the Board is comprised of five members who serve five-year, non-renewable terms.⁴ Candidates are sought through a process that includes advertising and recruitment efforts that focus on organizations whose members are experienced in the adjudication or arbitration of personnel matters. Applicants are expected to have expertise or litigation experience in the area of federal personnel law; or demonstrated ability to arbitrate or adjudicate complex legal matters; or experience at a senior legal position in resolving complex legal matters.

GAO establishes a screening panel to review the applications and identify the candidates it determines to be the best qualified.⁵ An interview panel composed of some of the screening panel members, including one member of the Employee Advisory Council (EAC), conducts the personal

interviews and reports its results to the full screening panel. The panel recommends one or more of the candidates to the Comptroller General who appoints members of the PAB. The Board elects its own Chair and Vice-Chair for one-year renewable terms.

Board Staff

The Board's Executive Director manages Board staff and Board operations. The Board's Solicitor and her staff advise Board members on legal matters and the Director of EEO Oversight conducts studies and produces reports on selected topics involving equal employment opportunity at GAO. The General Counsel, who is selected by the Board Chair and appointed by the Comptroller General, serves at the pleasure of the Board Chair. The Office of General Counsel investigates charges filed with the office and, if there is reasonable cause to believe that a violation of law has occurred, offers to represent the employee or applicant for employment before the Board.

¹ 31 U.S.C. §731.

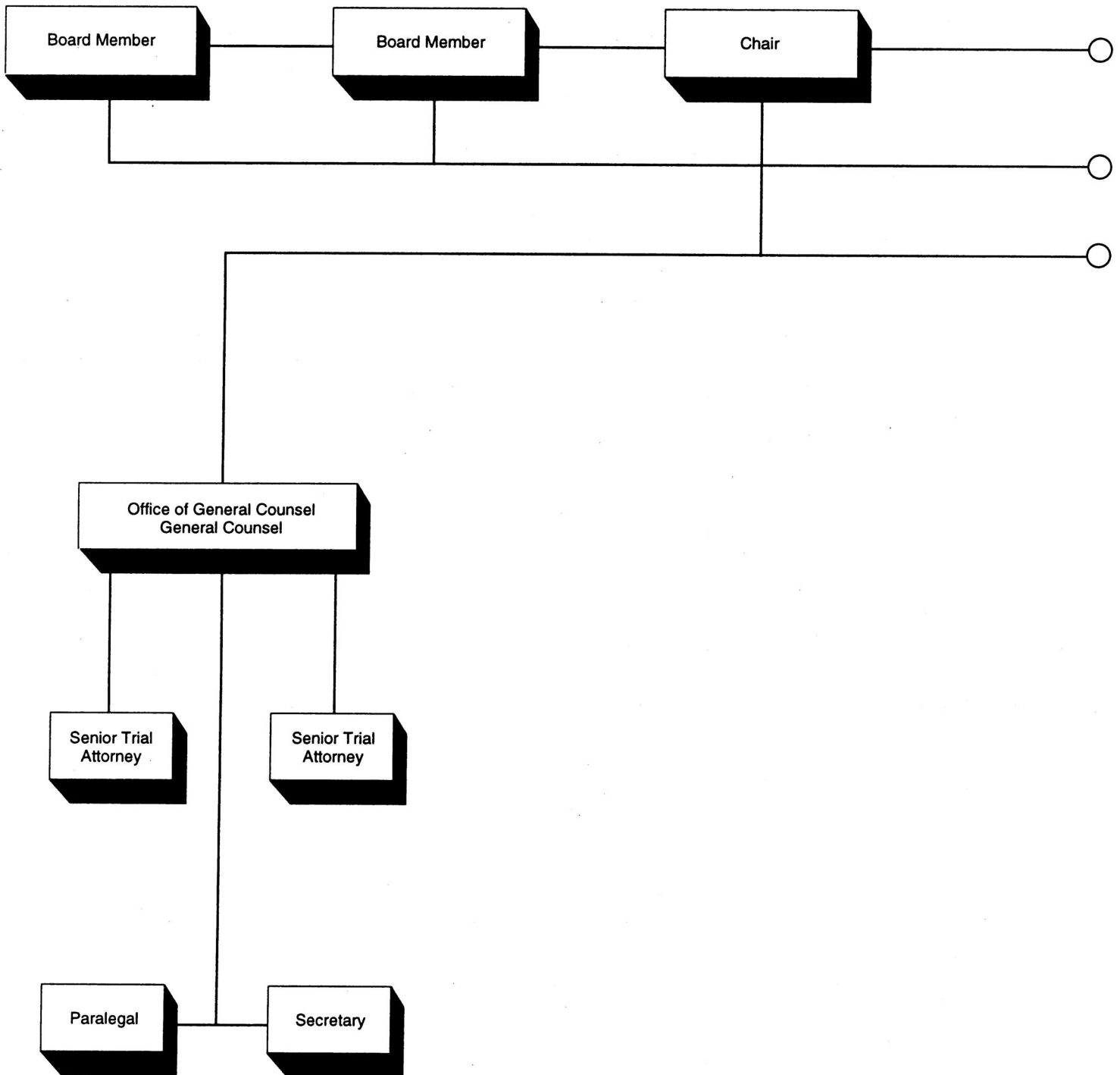
² *Id.* §732(f)(2)(A).

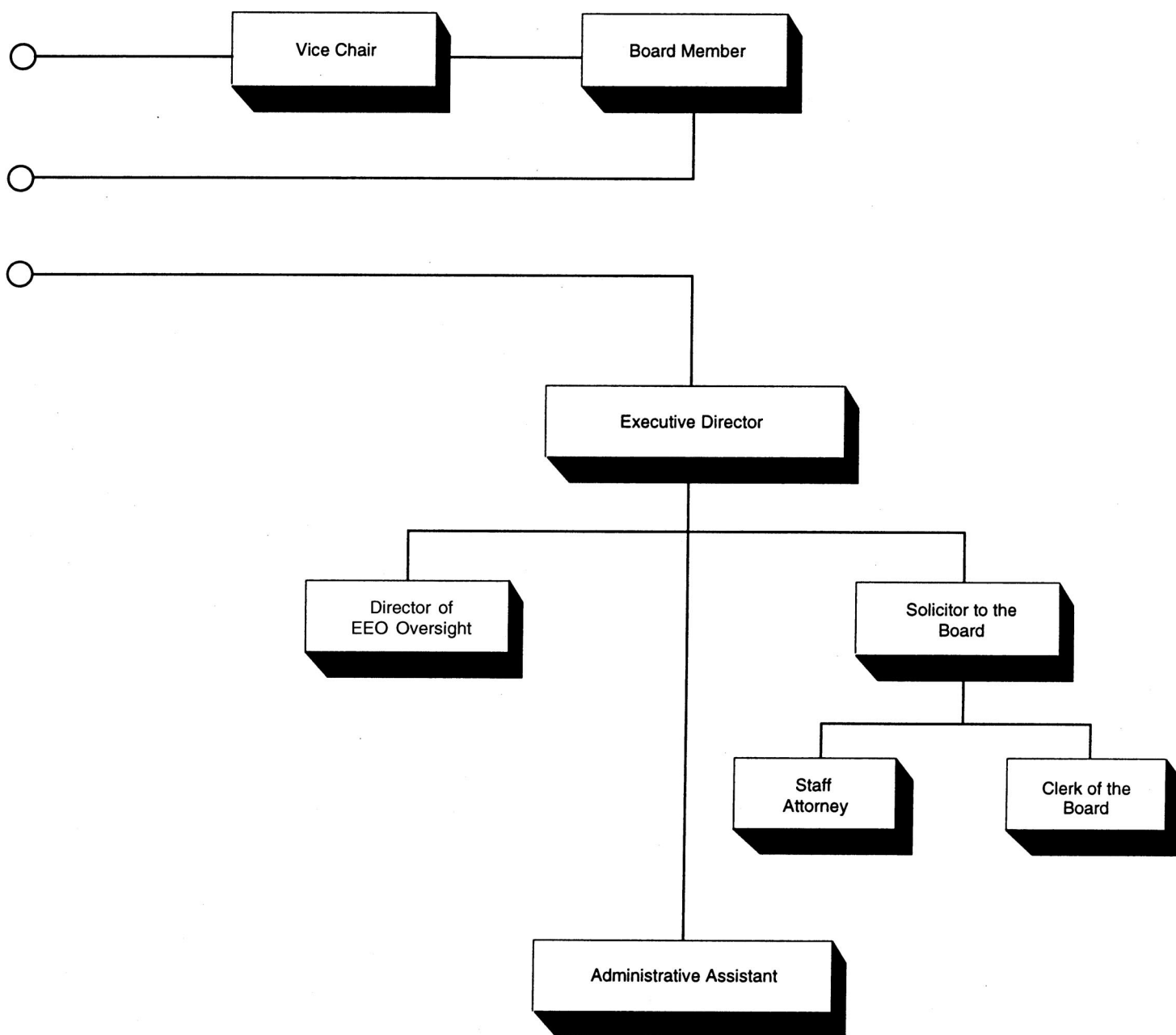
³ The Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices but, in the absence of unions at GAO, has not had the occasion to do so.

⁴ The Board currently operates with a quorum of three members.

⁵ The voting members of the screening panel are three or more senior management officials designated by the Comptroller General. The non-voting members are a representative from the Recruiting and Human Capital Operations Center and three representatives from the Employee Advisory Council.

Figure 1.1: Organizational chart for the Personnel Appeals Board





An employee, a group of employees, a labor organization or an applicant for employment at GAO may file an appeal with the Board, which can hear individual complaints as well as class actions. An appeal by a GAO employee may arise from (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other labor relations issue; (4) an action involving prohibited discrimination; (5) prohibited political activity; and, (6) any other personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

Prehearing Discrimination Complaint Procedures

At GAO, the discrimination complaint process begins with a consultation with a civil rights counselor, contact with whom must occur within 45 calendar days of the alleged incident.⁶ If the matter cannot be resolved, a formal written complaint may be filed with the Office of Opportunity and Inclusiveness (O&I) within 15 days of receipt from the counselor of notice of the right to file a complaint.⁷ The Director of O&I can either accept or dismiss the complaint.⁸ If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of O&I. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final agency decision. The decision of the Comptroller General may be appealed to the Board, as may O&I's decision to dismiss a complaint.

Initiating an Appeal

A GAO employee, group of GAO employees or an applicant for a job at GAO may file a Charge with the PAB/Office of General Counsel to initiate the appeal process. The PAB/OGC has the authority to investigate and to prosecute alleged violations of the law over which the Board has jurisdiction. A person may file a complaint that does not involve discrimination with the PAB/OGC within 30 calendar days after the effective date of a personnel action or within 30 calendar days after the complainant knew or should have known of the action. A person may file an appeal involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the agency rejection of the complaint in whole or in part, 30 calendar days after receipt of the agency's final decision, or when more than 120 days has elapsed since the complaint was filed and GAO has not issued a final decision.

Once an individual complaint is filed with the PAB/OGC, the complainant is advised of appeal rights and settlement options. The PAB/OGC then conducts an independent investigation (which may include obtaining documents and taking oral statements from persons with knowledge of the allegations) of the matters raised in the Charge to determine whether there are reasonable grounds to believe that the employee's rights under the GAO Personnel Act have been violated.

Upon conclusion of the investigation, and if no settlement occurs, PAB/OGC issues a Right To Appeal letter notifying the complainant that the investigation has been completed and that he/she has the right to file an appeal with the Board. The PAB/OGC also issues a confidential Report of Investigation to the complainant that

⁶ The complete procedures for filing a complaint may be found at U.S. General Accounting Office Operations Manual, Order 2713.2, "Discrimination Complaint Process" (December 2, 1997) (hereafter GAO Order 2713.2).

⁷ The Office of Opportunity and Inclusiveness was formerly known as the Civil Rights Office (CRO). GAO Order 2713.2 has not yet been updated to reflect the change in nomenclature.

⁸ Among the reasons a complaint may be dismissed are that it fails to state a claim; that it was not filed in a timely manner; that it alleges a matter that was not raised in pre-complaint counseling; that it contains allegations not within the jurisdiction of O&I; that it sets forth matters that are contained in a pending complaint or are the basis of a petition before the PAB or of a pending civil action in a Federal Court in which the complainant is a party; or that it is a matter that has been finally decided. A complaint may also be dismissed at any time during the process for failure of the complainant to prosecute the complaint. GAO Order 2713.2, ch. 3, §5.

includes the results of the investigation and the PAB/OGC's conclusions with regard to the legal and factual issues.

If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the complainant in an evidentiary hearing before the Board at no expense to the employee. When the complainant accepts the PAB General Counsel's offer of representation, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel. If, on the other hand, the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the complainant retains the right to file an appeal with the Board and seek an evidentiary hearing. The complainant may represent him/herself or retain private counsel in the appeal.

If an employee chooses to pursue an appeal without representation by PAB/OGC, the employee must file a Petition with the Board within 30 calendar days after service of the Right To Appeal letter from the PAB/OGC. Alternatively, if 180 days have elapsed from the filing of a charge with PAB/OGC and no Right to Appeal letter has been issued by the General Counsel, then an employee may "opt out" of the investigation and file a Petition with the Board. An employee who chooses that route foregoes the opportunity to have the General Counsel present the case to the Board.

Upon receipt of the Petition, the Chair may either appoint a single Board member to hear and decide the case or determine that the Board will hear the case *en banc* (by all Board members).

A Board member's decision is final unless (1) the Board member grants a party's motion to

reconsider; (2) the Board, on its own motion, decides to review the initial decision; or (3) a party requests full Board review. All final decisions, with few exceptions, may be appealed to the U.S. Court of Appeals for the Federal Circuit.

Fiscal Year 2002 Board Activity

A GAO employee appealed from an initial decision granting the Agency's Motion for Summary Judgment on claims that she was discriminated against in job assignments, that she was retaliated against for having filed a prior complaint, and that her office management maintained a hostile work environment. The full Board, with one Member concurring, affirmed the decision of the Administrative Judge. (PAB Docket No. 00-02, Nov. 9, 2001.)

The PAB's Office of General Counsel filed a Petition for Review with the Board on behalf of an employee, alleging that he was discriminated against on the basis of age with respect to performance appraisals, merit pay determinations, and job assignments. The Petition also claimed that GAO committed prohibited personnel practices in rating his performance in two consecutive appraisal periods. One week before the hearing was scheduled to begin, the parties settled the case. (PAB Docket No. 01-06).

An Administrative Judge sustained the removal of an employee who had alleged that GAO discriminated against her by failing to accommodate her disabilities; that GAO failed to provide adequate guidance to employees seeking accommodations for their disabilities; and, that GAO lacked the standards necessary to evaluate requests for accommodation. Following a four-day evidentiary hearing, the

Administrative Judge issued a decision that found the removal to be clearly supported by the evidence in the case. The Petitioner has appealed the decision to the full Board. (PAB Docket No. 99-02, April 25, 2002.)

An initial decision was issued in a case in which the PAB/OGC represented an employee who was removed from GAO. The Petitioner alleged that personnel actions taken against her by certain Agency officials constituted prohibited personnel practices that violated laws, rules, and regulations; that they were taken against her because she engaged in protected appeal activities; and that the actions were taken because of the Petitioner's race. Subsequent to a nine-day evidentiary hearing, the Administrative Judge determined that the removal for unacceptable performance was clearly supported by substantial evidence. The Administrative Judge also ruled that the Petitioner failed to establish affirmative defenses of prohibited personnel practices, retaliation or discrimination with respect to all her claims except one involving a performance appraisal. That appraisal was ordered to be set aside and expunged from all official records. The decision has been appealed to the full Board. (PAB Docket No. 01-03, Aug. 15, 2002)

The remainder of a hearing that began in fiscal year 2001 concluded in fiscal year 2002. The case was a consolidation of four separate Petitions for Review alleging that an employee received a sub-par performance appraisal, failed to be promoted, and was denied a merit pay increase due to her appeal activities. The parties settled the case prior to the issuance of an initial decision. (PAB Docket Nos. 00-04; 00-06; 00-09; 01-01)

An initial decision was issued in fiscal year 2002 in a case involving three Petitions for

Review that were consolidated for a hearing. The Petitions alleged reprisal for whistleblowing, retaliation for engaging in protected activity, and the commission of prohibited personnel practices with respect to Petitioner's performance appraisals. The Administrative Judge found for the Petitioner on one of her claims, a violation of merit system principles with respect to the lowering of two of Petitioner's ratings on a performance appraisal. Both parties have appealed the decision to the full Board. (PAB Docket Nos. 00-05 and 00-08, July 26, 2002).

An employee filed a Petition for Review with the Board alleging retaliation in the performance appraisal and pay assessment processes due to her appeal activities and whistleblowing. The Petitioner also alleged a number of prohibited personnel practices relating to her performance appraisal, performance standards and work assignments. The parties agreed to settle the case prior to the hearing. (PAB Docket No. 01-08).

The PAB/OGC filed a Petition for Review with the Board alleging retaliation because of Petitioner's prior appeal activities. Specifically, Petitioner alleged that his work assignments were of lesser quality and quantity than those of his peers, resulting in lower performance appraisals and awards. Prior to the fiscal year 2002 hearing, the Agency agreed to amend the performance appraisal in question. In an initial decision, the Administrative Judge held that, even with the revised rating, Petitioner was not entitled to monetary relief. The decision has been appealed to the full Board. (PAB Docket No. 01-05, Aug. 23, 2002)

A Petition for Review was filed alleging that Petitioner's failure to be selected for four supervisory positions was due to his age (over

forty), prohibited personnel practices in the selection processes, and in retaliation for his association with a person who has exercised protected appeal rights. The Administrative Judge scheduled a hearing in the matter to begin on February 20, 2002. The parties agreed to settle the case on February 19, 2002. (PAB Docket No. 01-07).

An employee filed a Petition for Review alleging that the Agency committed prohibited personnel practices with respect to her reassignment to a different Division, which resulted in denials of promotional opportunities and merit pay determinations and less competitive job assignments. Just prior to the commencement of the hearing, Petitioner withdrew her Petition for Review, resulting in dismissal of the case. (PAB Docket No. 01-11).

The steps to process cases before the Board are:

- Petition filed
- Notice of Petition sent out by Board (with service list)
- Board Member/Administrative Judge assigned
- GAO responds to the Petition
- Discovery
- Prehearing matters and motion practice
- Board Member/Administrative Judge rules on motions
- Each side files witness lists, exhibits and prehearing briefs, if required
- Final prehearing or status conference held, if necessary
- Hearing held
- Posthearing briefs filed, if required
- Board Member/Administrative Judge issues decision
- Motions to reconsider or notice of appeal for review by full Board filed
- Final decision issued by full Personnel Appeals Board
- Appeal to the U.S. Court of Appeals for the Federal Circuit (as appropriate)

Figure 2.2: Process of case from charge to termination of appeal

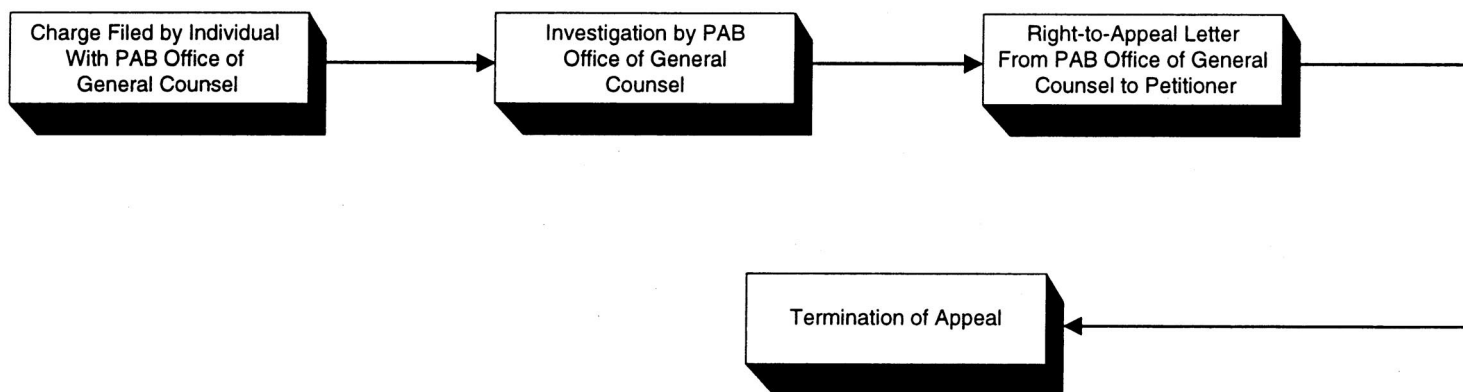


Figure 2.3: Process of case to final board member's decision with no appeal

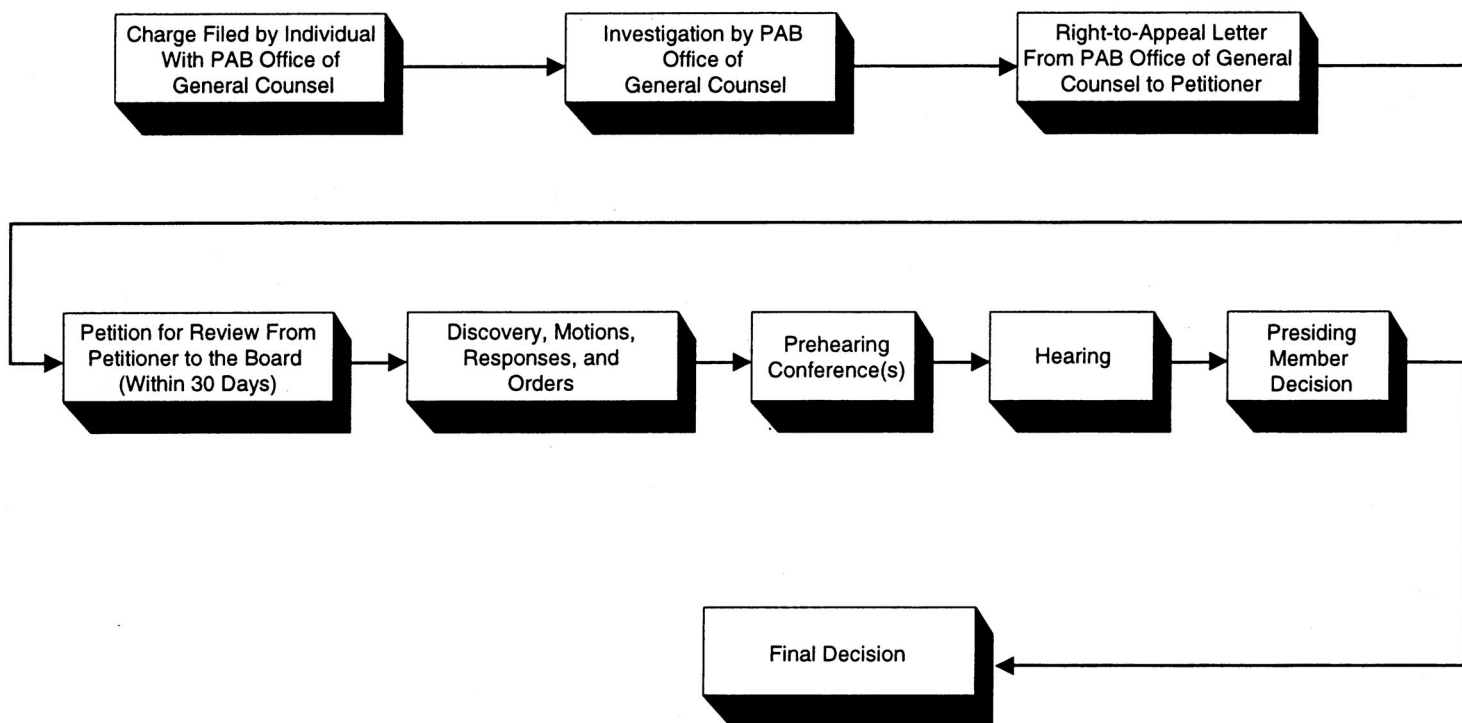


Figure 2.4: Process of case from charge to judicial review

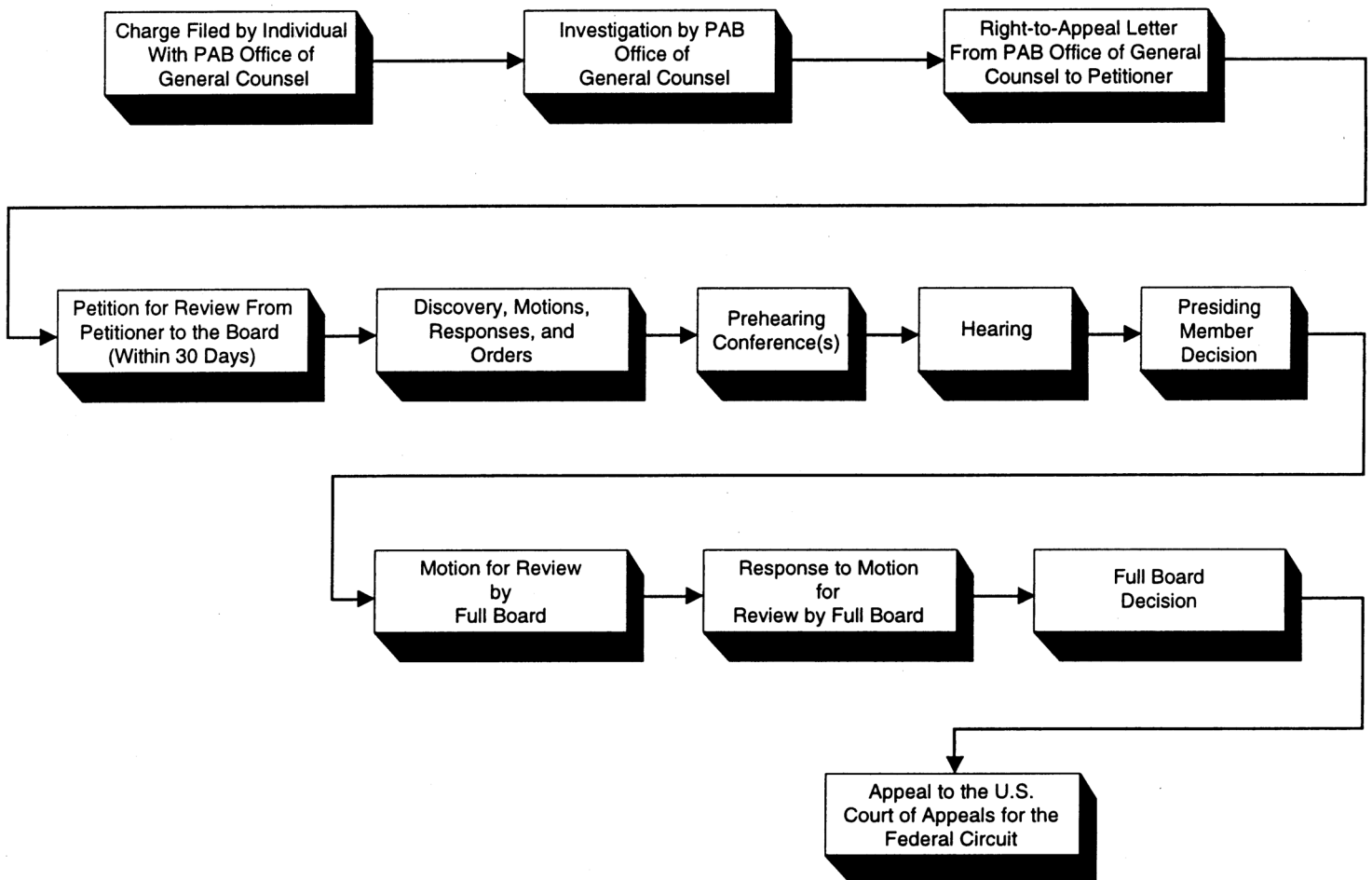


Figure 2.5: Process of reduction-in-force case (employee's option)

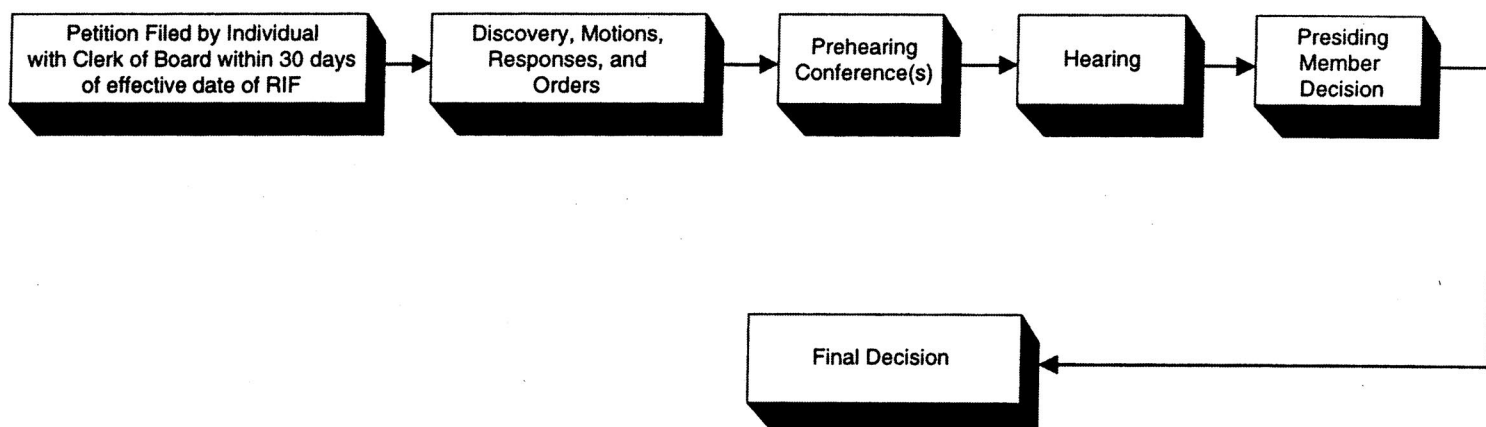
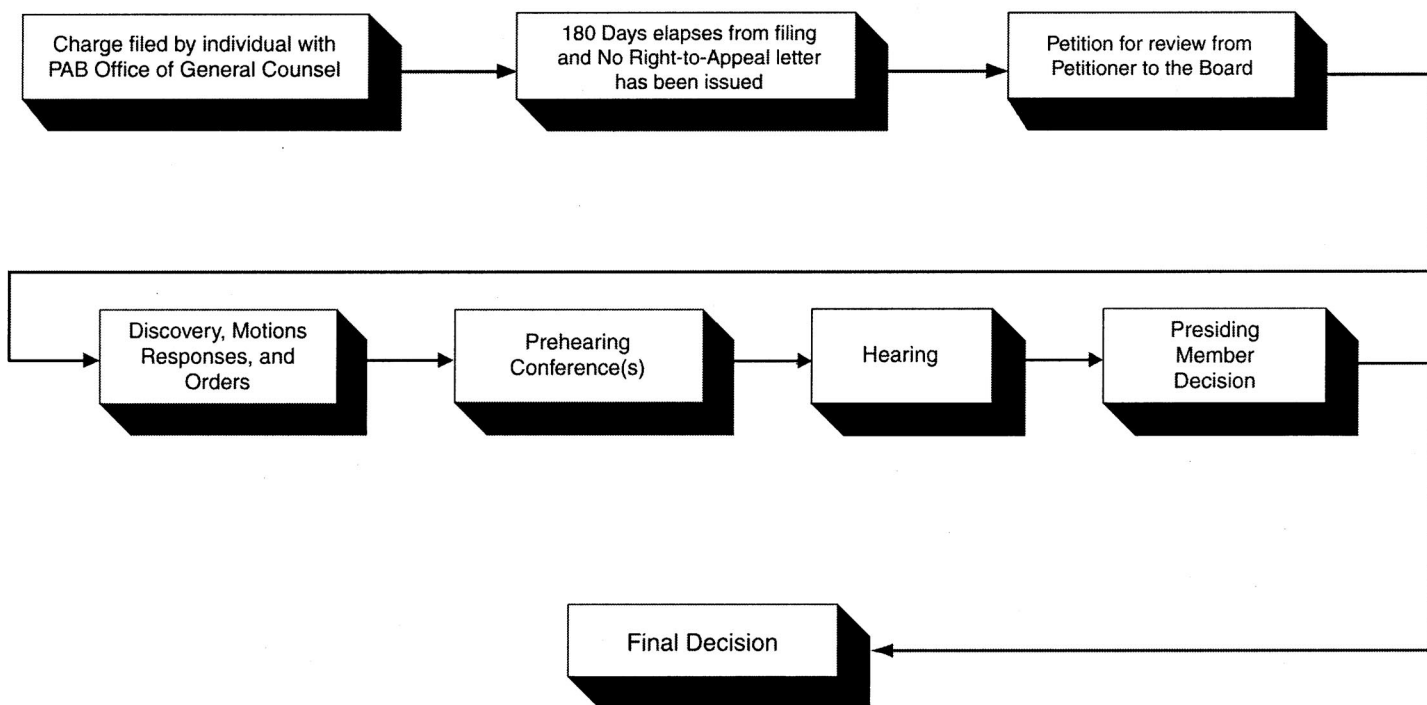


Figure 2.6: Process of case from charge to judicial review (employee opts out)



Case Activity

Twelve new cases were filed with PAB/OGC office during fiscal year 2002. Of those new cases, six involved claims of unlawful discrimination: one on the basis of a disability; two on the basis of race; one based on national origin; two based on sex; four alleging a hostile work environment and three claiming retaliation or reprisal for use of or participation in the EEO process.⁹

All twelve of the new cases filed involved claims of prohibited personnel practices (ppp): five alleged reprisal allegations for engaging in prior appeal activities; six alleged violations of GAO rules and regulations; one alleged discrimination based on non-performance related conduct; and one claimed solicitation or consideration of improper performance evaluations.

In addition, the following personnel actions were challenged in the new cases: eight performance evaluations; one promotion; one transfer/detail; two pay decisions; two decisions concerning benefits; four decisions concerning awards; two training decisions; two involuntary retirements; and two significant changes in duties, responsibilities or working conditions.

The PAB/OGC also filed one Petition for Review with the Board and participated in three other cases during the fiscal year. The PAB/OGC closed 13 cases during fiscal year 2002 through the issuance of Right to Appeal letters, settlements, or withdrawals of complaints.

PAB/OGC Investigative Authority

The PAB Office of General Counsel is authorized to conduct independent investigations into matters raised and presented in Charges filed by GAO employees or applicants for employment. This investigative authority represents the vast majority of investigations conducted by the Office of General Counsel. During fiscal year 2002, all of the investigations conducted by the Office of General Counsel were initiated by charges filed by employees.

In addition to investigations generated by individual or class charges, the Office of General Counsel may initiate its own investigations, otherwise known as informational or GC investigations.¹⁰ The General Counsel may initiate an investigation when information comes to his/her attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. If an individual brings an allegation to the attention of PAB/OGC, that individual may remain anonymous. Upon the conclusion of an investigation, if PAB/OGC finds insufficient evidence that there are reasonable grounds to believe that violation of the law has occurred or is about to occur, a confidential summary is forwarded to the complainant. The Agency and the Board are notified that the case is closed. When it is determined that there are sufficient grounds to believe that violation of the law has occurred or is about to occur, the PAB/OGC will contact the Agency with the findings and its recommendation. If the recommendation is not followed within a reasonable period, PAB/OGC may petition the Board to order corrective action. PAB/OGC did not initiate any information investigations in FY 2002.

⁹ All of the charges filed with PAB/OGC in FY 2002 were based on more than one subject matter category claim.

¹⁰ 4 C.F.R. §28.131

Stays

PAB/OGC may request that the Board issue an *ex parte* stay, not to exceed 30 calendar days, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. If the request for an *ex parte* stay is granted, the General Counsel may request either a further temporary stay or a permanent stay of the proposed action. The Board may grant or deny the requested stay, require further briefing and/or oral argument or conduct an evidentiary hearing. When PAB/OGC seeks a stay of a personnel action, it conducts an investigation into the allegations of prohibited personnel practices. No stays were sought in FY 2002.

Disciplinary Proceedings

The PAB General Counsel is authorized to initiate a disciplinary action against an employee when it is determined, after an investigation, that such action is warranted. In such cases, the PAB General Counsel will provide a written summary of the determination and facts to the employee and the Board.¹¹ However, if the employee is in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, PAB/OGC will forward the written summary to the employee and the Congress, not the Board. The PAB/General Counsel may also propose disciplinary action against any employee engaging in prohibited political activity.

After a hearing, the Board decides whether discipline is warranted and what punishment is appropriate. The Board may order removal, reduction in grade, debarment from GAO employment, reprimand, or an assessment of civil penalty not to exceed \$1,000. There is no

administrative appeal from an order of the Board. Judicial review of the Board's order may be obtained in the U.S. Court of Appeals for the Federal Circuit. PAB/OGC did not institute disciplinary proceedings in FY 02.

Employee Contacts

In addition to its investigative and prosecutorial authority, the PAB/OGC also provides oral advice to employees about their personnel and equal employment rights. This is accomplished by responding to questions about diverse issues such as personnel actions, performance appraisals, grievances, and the complaint process, and presentations to GAO's employee councils to update them on recent changes in the law and Board procedures. The PAB/OGC responded to 20 requests for informal advice during the fiscal year.

Other Activities

The PAB Office of General Counsel often submits written comments on proposed GAO-initiated changes to GAO orders and policies to ensure the protection of rights afforded employees under the GAO Personnel Act. Last fiscal year, the Office submitted comments on five draft GAO Orders; two Interim GAO Orders; two draft Notices; and, an Appraisal System Policy Manual. The Office also proposed changes to the Board's regulations, which were being revised during the fiscal year, and provided examples and information to assist the Board in the regulatory revision process.

PAB/OGC staff also prepared a section of the PAB's web page describing the jurisdiction, functions, and operations of the office and provided information about the jurisdiction of the office for inclusion in GAO's Administrative Services Guide.

¹¹ *Id.* §28.132

The GAO Personnel Act directs the Board to oversee equal employment at GAO through review and evaluation of GAO's procedures and practices.¹² In furtherance of its mandate, the Board established an Office of EEO Oversight to conduct studies of selected issues and prepare evaluative reports that often contain specific recommendations to the agency. In fiscal year 2002, the Office of EEO Oversight focused on GAO's minority recruitment program, pay levels and probationary periods for new employees, and the activities of the Office of Opportunity and Inclusiveness.

Minority Recruitment

In fiscal year 2002, the Board published a report about GAO's minority recruitment program. In the study, the Board examined recruitment procedures at GAO to determine whether GAO has implemented a minority recruitment program in accordance with the mandate of 31 U.S.C. §732(f)(1)(B).¹³

The Board concluded that GAO does maintain a continuing program for recruitment of minorities and women and that GAO's overall approach to minority recruitment, which includes vigilance in monitoring trends that could lead to underrepresentation, comports with the mandates of 5 U.S.C. §7201. The Board also noted that the consistency of the diversity in the Agency's ranks and among the new hires indicates that there is a continuing effort to improve the Agency's eeo profile.

The Board's study did, however, reveal that black males, who constitute 5.7 percent of the Agency's workforce, comprised 3 percent of the intern population during the time period of the Board's study, 1.8 percent of interns offered positions, and 1.1 percent of interns accepting positions.

The Board suggested that the Agency examine its internship program with an eye toward expanding the pool of qualified black candidates. In a letter sent to the Board after reviewing the report, GAO's Human Capital Officer indicated that the Agency was working on several initiatives to address the concern.

Pay Levels and Probationary Periods

During the fiscal year Board staff began drafting a report on pay levels and probationary periods for new hires in the analyst series at GAO. The report was based on a study of data on recent hires, including, their initial pay rates, probationary terms, length of service at GAO, education, experience and training. This data was broken down by race, national origin, sex, age, and disability. In addition, data in the same eeo categories was requested on separations of new hires from GAO, including the reasons for the separations. Board staff also reviewed Agency policies, Orders, directives and internal memoranda that govern the setting of rates of pay and length of probationary terms for entry-level employees. The report, which will be published in fiscal year 2003, will contain the Board's findings and conclusions about whether race, national origin, sex, age or disability are factors in determining the levels of pay of newly hired employees and whether there are there were diversity implications in the numbers of employees who left GAO during their probationary periods.

The Office of Opportunity and Inclusiveness

In fiscal year 2001, the Board approved a project proposal to study the operations of the Office of Opportunity and Inclusiveness (O&I).

¹² 31 U.S.C. §732(f)(2)(A); See applicable regulations at 4 C.F.R. §§28.91 and 28.92.

¹³ Section 732(f)(1)(A) of the GAOPA states: The personnel management system shall

(A) provide that all personnel actions affecting an officer, employee, or applicant for employment be taken without regard to race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition.

In 1995, the Board issued a report entitled *GAO's Discrimination Complaint Process and Mediation Program* in which it looked at the operation of the discrimination complaint process from the initial contact with a counselor through the issuance of the Agency's final decision and the Agency's mediation program. In 1998, the Board issued a follow-up report, tracking the Agency's compliance with the Board's specific recommendations.

In 2001, the name of the Civil Rights Office was changed to the Office of Opportunity and Inclusiveness (O&I) and its role was greatly expanded. According to the new Director of

O&I, he intends that the office focus more on front-end issues such as recruitment, performance evaluations, and promotions. In remarks early in his tenure, the Director also indicated that he wanted to streamline the complaint process and tighten the timeframes throughout the process.

The Board's study will focus on O&I's role in the Agency's various human capital initiatives and programs, and how it differs from its CRO predecessor. The Board will also study the complaint processing system and data to ensure that that process is thorough, fair and equitable.

Regulatory Revisions

As a matter of course, the Board periodically reviews its procedural regulations to update them and keep them current. In fiscal year 2002, the Board began the process of revising its regulations specifically in order to clarify the meaning of some sections and to correct those provisions that have been affected by changes in law or Agency structure. For example, the Board's regulations still reflect the jurisdiction of the Board to hear appeals of employees of the Architect of the Capitol, the Botanic Garden and the Senate Restaurants. Pursuant to the Congressional Accountability Act of 1995, the Office of Compliance now hears those claims so the Board is repealing those portions of its regulations that concern those appeals. Other revisions will reflect changes in the way cases are processed before the Board.

Web Page Development

The Board's staff has been working with the Knowledge Services Office (KSO) and Information Systems and Technology Services (ISTS) to develop an external web site that describes the workings of the Board and its Office of General Counsel. Among the features of the site will be 20 years of decisions in a searchable format, links to Board's current regulations, the Guide to Practice, downloadable complaint forms, and links to useful reference and practice materials. It is expected to be fully operational in FY 2003.